**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**WRIT PETITION NO.4065 OF 2007**
**WITH**
**WRIT PETITION NO.4069 OF 2007**
**WITH**
**WRIT PETITION NO.4070 OF 2007**

The Ballaleshwar Sahakari Patpedhi
Maryadit ..Petitioner.
Vs.
1. Mrs.Mira Nilesh Shah
2. Shri Nilesh Dhirajlal Shah
3. Shri Nishith Dhirajlal Shah ..Respondents.

Mr.Uday Warunjikar, adv. for the Petitioner.
None for the Respondents.

**CORAM : J.H.BHATIA, J.**
**DATE : JULY 6, 2007.**

P.C.

1. Heard Mr.Uday Warunjikar the learned counsel for the petitioner. The respondent nos.1, 2 and 3 had borrowed certain loan for purchase of a vehicle from the petitioner, who is a co-operative credit society. According to the petitioner, the agreed rate of interest was 18 % per annum plus penal interest at the rate of 3% per month in the case of default in any instalment. The trial Court passed the award with interest at the rate of 15% per annum from the date of filing dispute till realisation of the amount. The respondents preferred an appeal before the Co-operative Appellate Court. The appellate Court partly allowed

the appeal and modified award to the extent of future interest from the date of filing the dispute. The appellate Court granted interest at the rate of 9% per annum from the date of filing dispute till the date of award and further interest at the rate of 6% per annum only on award amount from the date of award till realisation. Being not satisfied, original disputant has preferred these petitions.

2. The learned counsel for the petitioner contended that in the appeal memo no ground was taken about rate of interest and, therefore, the Appellate Court was not justified in reducing the rate of interest. He further contended that in view of the provisions of Section 34 of the C.P.C. future rate of interest could not be less than contractual rate of interest.

3. Under Section 34 of the C.P.C. , the Court while passing decree for payment of money may grant interest at such rate as it may deem reasonable on the principal amount adjudged, from the date of the suit to the date of decree, and further interest at such rate not exceeding 6% per annum as the Court deems reasonable, from the date of decree to the date of payment or to such earlier date as the Court thinks fit. However, proviso to Sub-section (1) provides that if liability arises out of commercial transaction

further interest may exceed 6% per annum but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by the nationalised bank in relation to the commercial transactions.

4. There is no dispute that in the present matters loan was advanced for the purchase of vehicle and, therefore, these were the commercial transactions. In view of language of Section 34, it is clear that from the date of suit till the date of decree, the Court may order interest at such rate as it deems reasonable. As far as future rate of interest is concerned, normally it shall not exceed 6% but in case of commercial transactions, rate of interest may exceed 6% but shall not exceed the contractual rate or where there is no contractual rate, rate at which moneys are lent or advanced by the nationalised bank. From this it is clear that proviso to Sub-section (1) to Section 34 does not make it mandatory to award contractual rate of interest. In fact, contractual rate of interest is a maximum limit and not the minimum limit at which rate, interest can be awarded. As far as future interest from the date of decree till the realisation of the amount is concerned, it can not be said that merely because the appellate Court awarded future interest at a rate which is less than contractual rate of interest,

order is against the provisions of Section 34.

5. The learned counsel for the petitioner has shown me original documents pertaining to this transaction. The promissory note reveals that the agreed rate of interest was 18% per annum but there is no reference to any penal rate of interest. As far as application for loan is concerned, there is a clause about contractual rate of interest at the rate of 18% per annum and penal rate of interest being 3% per month. The trial Court noted that the counsel for the petitioner-disputant had fairly made a statement that even though the contractual rate of interest was 18%, there was directive from the commissioner of Co-operatives to charge the interest at 15% only. It shows that the contractual rate itself was against the directives issued by the Commissioner of Co-operative Department. Taking into consideration this aspect, the trial Court had not granted interest at the rate of 18% per annum from the date of dispute till the realisation of the amount.

6. The learned Appellate Court noted that on perusal of the statement of account, he had noticed that the petitioner had charged monthly interest on due amount and the same was capitalised. In view of this, it appears that not only penal interest at the

exorbitant rate of 3% per month was charged but the interest was also charged compounded and capitalised every month and thus, when the dispute was filed, principal amount, as on that day, itself was including huge amount of interest, penal interest and interest on such interest and penal interest. Taking into consideration these aspects and the weak financial position of the borrower, the Appellate Court reduced the rate of interest to 9% from the date of dispute till the date of award and further interest at the rate of 6% per annum from the date of award till the realisation of the amount. It is admitted position that the borrower could not make payment and the vehicle was attached and sold away. This aspect corroborates the observation made by the Appellate Court that the respondent borrower is a poor person.

7. The learned counsel for the petitioner contended that the findings of the trial Court that the interest was capitalised every month is not corroborated by any evidence and, therefore, this observation of the Appellate Court is perverse. I am unable to accept this contention. The learned Appellate Court has clearly observed that he has carefully perused the statement of account showing that the interest was charged and capitalised every month.

8. Taking into consideration all these circumstances, rate of interest was reduced by the Appellate Court. I find that Section 34 itself gives discretion to award interest from the date of suit till the date of decree at such rate as the Court may deem reasonable and further interest from the date of decree till the realisation of the amount at such rate not exceeding the contractual rate. In view of this, there is no violation of law and the the impugned order needs no interference.

9. In the result, petitions stand dismissed.

**[J.H.BHATIA, J.]**